



## RCRA Corrective Action Notification Requirements

**BACKGROUND:** Owners/operators of permitted hazardous waste management facilities must comply with notification requirements that trigger corrective action when groundwater monitoring data indicate that there has been a release of hazardous constituents to the ground water [40 CFR 264.99(h)(1)]. Under regulations applicable to owners/operators of interim status facilities, there is no similar notification requirement that triggers corrective action. However, owners/operators of interim status facilities in an assessment monitoring program are required to submit regular ground-water quality reports to the implementing regulatory agency [40 CFR 266.94(b)(2)]. On the basis of such reports, the regulatory agency may issue an administrative order under Section 3006(h) of the Resource Conservation and Recovery Act (RCRA), or permit the facility and establish corrective action requirements in the facility's permit

Proposed corrective action requirements under 40 CFR 264, Subpart S (55 FR 30798 et seq.; July 27, 1990) extend notification requirements in two respects. First, under the proposed requirements, notification is required for certain contaminant releases to air and soil, as well as to ground water. Second, in the event of a release, notification to local residents and potential property buyers, as well as to regulators, may be required.

This Information Brief provides detailed information on the notification requirements associated with corrective action that are applicable to owners/operators of permitted and interim status hazardous waste management facilities under existing and proposed corrective action regulations.

**STATUTE:** RCRA Section 3004.

**REGULATIONS:** 40 CFR 264, Subpart F; 40 CFR 266, Subpart F

- REFERENCES:**
1. "Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule," 55 FR 30798 et seq.; July 27, 1990.
  2. "Ground-water Monitoring Under RCRA," U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, RCRA Information Brief, EH-231-039/1193 (November 1993).
  3. "RCRA Corrective Action Program Guide - Interim Guidance," U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Guidance Manual, DOE/EH-0323, May 1993.

### When is notification that would trigger corrective action required for permitted facilities?

Under existing regulations, owners/operators of permitted facilities are required to notify the appropriate regulatory agency (EPA or authorized State) in writing within seven days of finding that any contaminant concentration limit for ground water specified in the facility's RCRA permit is being exceeded at any monitoring well at the point of compliance. The notification must indicate which contaminant concentration limits have been exceeded [40 CFR 264.99(h)(1)].

Contaminant concentration limits, the point of compliance, and the compliance period comprise the ground water protection stan-

dard specified in the permits of facilities in a compliance monitoring program. A ground water protection standard is established and included in a facility's permit when a statistically significant contaminant release is detected at the waste management unit boundary under a detection monitoring program (40 CFR 264.92).

Following notification to the regulatory agency that a contaminant concentration level has been exceeded, the owner/operator must submit an application for a permit modification to establish a corrective action program [40 CFR 264.99(h)(2)]. Once a corrective action program is established in accordance with the requirements of 40 CFR 264.100, the owner/operator must report on the effectiveness of the corrective action program semi-annually [40 CFR 264.100(g)].



## When is notification that would trigger corrective action required for interim status facilities?

For interim status facilities, there is no specific notification that triggers the transition to corrective action. Owners/operators of these facilities must institute an assessment monitoring program if the results of detection monitoring performed in accordance with 40 CFR 265.92 indicate that ground-water contamination has occurred. An initial report containing an assessment of ground-water quality must be submitted to the regulatory agency within 15 days. The report must describe the concentration, fate, and extent of migration of hazardous constituents in the ground water (40 CFR 265.93).

Owners/operators of facilities that remain in an assessment monitoring program must submit a report to the regulatory agency annually describing the results of the ground-water assessment program. The report, which must be submitted no later than March 1 of each calendar year, must contain the calculated (or measured) rate of migration of hazardous waste or hazardous constituents in the ground water during the reporting period [40 CFR 265.94(b)(2)]. Based on the information in these reports, the regulatory agency may require the owner/operator to perform corrective action. Before the facility receives a RCRA permit, the regulatory agency may compel the owner/operator to perform corrective action by issuing an administrative order under Section 3008(h) of RCRA. **[Update 3/99: It should be noted that if there is evidence of conditions posing an imminent and substantial endangerment to health or the environment, EPA may choose to issue an order to abate those conditions as quickly as possible under the imminent hazard provisions of Sect. 7003 of RCRA instead of Sects. 3004(u), 3004(v), or 3008(h).]**

## What additional notification requirements are contained in the proposed corrective action regulations?

The proposed corrective action regulations contain additional notification requirements associated with ground-water contamination, air contamination, and residual contamination. These requirements are described below.

For ground-water contamination resulting from a release migrating beyond the permitted hazardous waste management facility boundary in concentrations that exceed action levels, the owner/ operator of the facility must notify:

- ☐ the regulatory agency, and
- ☐ any person who owns or resides on land overlying ground water which may have been contaminated by the release.

Such notification must be made in writing within 15 days of the discovery of the release [proposed 40 CFR 264.560(a)]. Action levels are health- and environmentally-based levels of hazardous constituents in ground water, surface water, soils or air, that EPA has determined indicate the need to perform a Corrective Measures Study (CMS) (55 FR 30814 *et seq.*; July 27, 1990). Additional information about action levels and CMSs is available in Reference 3.

For air contamination, the owner/operator must notify the regulatory agency and any individuals who were or may have been exposed to air releases that migrated to areas beyond the hazardous waste management facility boundary in concentrations above the action level. Such notification must be made in writing within 15 days of the discovery of the release [proposed 40 CFR 264.560(b)]. For residual

contamination, the regulatory agency may require the owner/operator to record a notation in the deed to the facility property (or in an equivalent document examined during a title search) that will notify any potential purchaser of the property of the types, concentrations, and locations of hazardous constituents re- leased or remaining in or on the land after the term of the permit has expired [40 CFR 264.560(c)].

## What distinguishes the various types of notification requirements?

Under the proposed corrective action regulations, corrective action is not triggered by any specific notification requirement or reporting requirement. The owner/operator of a hazardous waste management facility will be required to perform a corrective measures study if, at any time, the implementing regulatory agency determines that:

- ☐ concentrations of hazardous constituents in ground water in an aquifer, surface water, soils, or air exceed an action level; and
- ☐ there is reason to believe that such hazardous constituents have been released from a solid waste management unit at the facility [proposed 40 CFR 264.520(a)].

The preparation of a corrective measures study is one of the necessary steps for performance of corrective action. The effect of the new notification requirements is to inform regulators and the affected public of conditions posing a potential threat to human health and the environment. (Reference 3 provides additional information about the corrective action process under the proposed regulations.)

Under existing corrective action regulations applicable to permitted facilities, notification that a contaminant concentration limit is being exceeded at any waste management unit monitoring well at the point of compliance serves to trigger the requirement to submit a permit modification to begin a corrective action program. Under existing corrective action regulations applicable to interim status facilities, reporting under an assessment monitoring program serves to inform the regulatory agency of the need to accelerate plans to permit the facility and investigate the need to perform corrective action as part of the permitting process, or to compel corrective action under a RCRA 3008(h) order.

## How would the proposed corrective action requirements affect the existing notification requirements?

The proposed corrective action requirements do not affect the existing notification requirements. However, the preamble to the proposed regulation explains that EPA plans to develop a proposal that would restructure the current ground-water monitoring/corrective action regulations to make them consistent with the key features of the proposed corrective action regulations (55 FR 30854 *et seq.*; July 27, 1990).

**Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Jerry Coalgate, RCRA/CERCLA Division, EH-231, (202) 586-6075.**

